UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,390	12/01/2003	Hideho Tanaka	33809/RBC/VEJ	5610

32940 7590 03/04/2005

DORSEY & WHITNEY LLP
INTELLECTUAL PROPERTY DEPARTMENT
4 EMBARCADERO CENTER
SUITE 3400
SAN FRANCISCO, CA 94111

EXAMINER	
NGUYEN, SON T	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/726,390	TANAKA, HIDEHO	
	Examiner	Art Unit	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 December 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *5/3/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "12" has been used to designate both container part and lever storage. Reference character "23" has been used to designate both spindle part and axis. Reference character "30" has been used to designate both 1st and 2nd floats. Reference character "33" has been used to designate both spindle part and axis. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "40" and "41" have both been used to designate water catcher. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet

submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. regarding claim 1, line 2, it is unclear how the case is airtight case when the bottom part of the case is opened?

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. **Claims 1-8** are rejected under 35 U.S.C. 102(a) as being anticipated by Aaenu et al. (JP2002345342 on form PTO-1449). Aaenu et al. clearly anticipate in a water level regulator as claimed by the present invention.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. **Claims 1-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fah (US 4864771) in view of Aaenu et al. (as above).

For claim 1, Fah teaches a water level regulator for adjusting water level comprising: a case 37 having a side and upper surfaces forming an airtight case chamber, a water filling port 40, an air vent hole 22; a first float 20 mounted on said upper surface of said case for vertical movement by a first buoyancy thereof, said first float including a ventilation plug 52,56 for closing said air vent hole when the water level falls below a first prescribed level (W1) and releasing said air vent hole when water level in said case exceeds said first prescribed water level; and a second float 11 mounted inside said case for vertical movement by a second buoyancy thereof, said second float including a filling port plug 12,42,41 for shutting said water filling port when the water level in said case exceeds a second prescribed water level (W2) that is higher than said first water level (W1) and opening said filling port filling port when the water level falls approximately to said height of said air inlet and opens said case chamber to atmosphere. However, Fah's case does not have an open bottom and an air inlet having a height at a lower part of said side surface.

Aaenu et al. teach a case having an open bottom and an air inlet 18 having a height at a lower part of said side surface. It would have been an obvious substitution of functional equivalent to substitute the case of Fah with a case with an open bottom as taught by Aaenu et al., since both cases would perform to house the regulator therein. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an air inlet 18 having a height at a lower part of said side surface as taught by Aaenu et al. in the case of Fah in order to allow air inside the case for ventilation.

For claim 2, Fah as modified by Aaenu et al. (emphasis on Fah) further teaches wherein filling port is located on a side of said case and said air vent hole is located on said upper surface of said case (see fig. 1, near refs. 40 & 50).

For claim 3, Fah as modified by Aaenu et al. (emphasis on Fah) further teaches wherein said water level regulator is mounted on a bottom surface of a water catcher 45. However, Fah as modified by Aaenu et al. (emphasis on Fah) is silent about a plurality of planters are mounted on an upper part of said water catcher. In addition to the above, Aaenu et al. teach a plurality of planters are mounted on an upper part of said water catcher (see figs. 8,9,11,14). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of planters are mounted on an upper part of said water catcher as further taught by Aaenu et al. in the combination of regulator and catcher of Fah as modified by Aaenu et al. in order to provide fluid to a plurality of planters and not just one.

For claim 4, Fah as modified by Aaenu et al. is silent about the water level regulator according to claim 1 in combination with a water catcher and a water absorption mat, wherein said water catcher includes a groove in an upper surface thereof and an absorption part on which said water absorption mat is arranged, said water level regulator being installed on an inside bottom of said water catcher. In addition to the above, Aaenu et al. further teach a water level regulator according to claim 1 in combination with a water catcher and a water absorption mat, wherein said water catcher includes a groove in an upper surface thereof and an absorption part on which said water absorption mat is arranged, said water level regulator being installed on an inside bottom of said water catcher. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the water level regulator of Fah as modified by Aaenu et al. in combination with a water catcher and a water absorption mat, wherein said water catcher includes a groove in an upper surface thereof and an absorption part on which said water absorption mat is arranged, said water level regulator being installed on an inside bottom of said water catcher as further taught by Aaenu et al. in order to slowly water the plants in the planter by using the mat as in capillary action and to separate the planters by the grooves.

For claim 5, Fah as modified by Aaenu et al. is silent about the water level regulator in combination with a flowerpot, wherein said water absorption mat is formed of a bonded textile and said flowerpot is set up on said water absorption mat. In addition to the above, Aaenu et al. teach the water level regulator in combination with a flowerpot, wherein said water absorption mat is formed of a bonded textile and said

flowerpot is set up on said water absorption mat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the regulator of Fah as modified by Aaenu et al. with a flowerpot, wherein said water absorption mat is formed of a bonded textile and said flowerpot is set up on said water absorption mat as further taught by Aaenu et al. in order to provide water to the flowerpot by capillary action of the mat.

For claim 6, Fah as modified by Aaenu et al. (emphasis on Fah) further teaches the regulator in combination with a planter body 45, said planter including a sidewall and an inside bottom, wherein said water level regulator is installed on inside bottom of said planter body.

For claim 7, Fah as modified by Aaenu et al. is silent about the water level regulator in combination with a water catcher, a sidewall, a top panel and planting soil, wherein said water regulator is mounted on a bottom surface of said water catcher and said water catcher includes a partition wall that is water permeable and separates planting soil from said water level regulator, said sidewall being installed outside of and surrounding said water catcher, said top panel positioned adjacent an upper part of said sidewall and being formed of a hollow container having water intake holes and drainage and plant holes allowing plants to grow vertically through said top panel, wherein said water filling port of said water level regulator is connected to said drainage of said top panel. In addition to the above, Aaenu et al. further teach the water level regulator in combination with a water catcher, a sidewall, a top panel and planting soil, wherein said water regulator is mounted on a bottom surface of said water catcher and said water

catcher includes a partition wall that is water permeable and separates planting soil from said water level regulator, said sidewall being installed outside of and surrounding said water catcher, said top panel positioned adjacent an upper part of said sidewall and being formed of a hollow container having water intake holes and drainage and plant holes allowing plants to grow vertically through said top panel, wherein said water filling port of said water level regulator is connected to said drainage of said top panel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the regulator of Fah as modified by Aaenu et al. in combination with a water catcher, a sidewall, a top panel and planting soil, wherein said water regulator is mounted on a bottom surface of said water catcher and said water catcher includes a partition wall that is water permeable and separates planting soil from said water level regulator, said sidewall being installed outside of and surrounding said water catcher, said top panel positioned adjacent an upper part of said sidewall and being formed of a hollow container having water intake holes and drainage and plant holes allowing plants to grow vertically through said top panel, wherein said water filling port of said water level regulator is connected to said drainage of said top panel as further taught by Aaenu et al. in order to provide water to the plants contained on the catcher and to allow the plants to grow vertically for aesthetic appearance.

For claim 8, Fah as modified by Aaenu et al. is silent about the water level regulator in combination with a water catcher, a water absorption mat placed on said water catcher to absorb water inside said water catcher, a root proof mat that is located on said water absorption mat, a drain layer that is located on said root proof mat, a

water storage layer that is located on said drain layer wherein seeds may be sown on said water storage layer, and a sunshade mat covering said water storage layer, wherein said water level regulator is located inside said water catcher. In addition to the above, Aaenu et al. further teach the water level regulator in combination with a water catcher, a water absorption mat placed on said water catcher to absorb water inside said water catcher, a root proof mat that is located on said water absorption mat, a drain layer that is located on said root proof mat, a water storage layer that is located on said drain layer wherein seeds may be sown on said water storage layer, and a sunshade mat covering said water storage layer, wherein said water level regulator is located inside said water catcher. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the regulator of Fah as modified by Aaenu et al. in combination with a water catcher, a water absorption mat placed on said water catcher to absorb water inside said water catcher, a root proof mat that is located on said water absorption mat, a drain layer that is located on said root proof mat, a water storage layer that is located on said drain layer wherein seeds may be sown on said water storage layer, and a sunshade mat covering said water storage layer, wherein said water level regulator is located inside said water catcher as further taught by Aaenu et al. in order to provide water to the plants contained on the catcher by capillary action of the mat.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765

(for the month of March). After March, the Examiner can be reached at 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Son T. Nguyen
Primary Examiner
Art Unit 3643

stn